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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. NICHOLAS BENJAMIN RAY, Defendant and Appellant.	E070597 (Super.Ct.No. FVI17002090) OPINION

APPEAL from the Superior Court of San Bernardino County. Brian K. Stodghill, Judge. Affirmed.

Gregory L. Cannon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Nicholas Benjamin Ray was charged by information with committing a lewd act upon a child (Pen. Code,[1] § 288, subd. (a), count 1), and possession or control of child pornography (§ 311.11, subd. (a), count 2). A jury convicted him of count 2, but acquitted him of count 1. A trial court denied defendant's motion to reduce his conviction to a misdemeanor. It then sentenced him to the low term of two years in state prison.

Defendant filed a timely notice of appeal. We affirm the judgment.

FACTUAL BACKGROUND

Google, Inc. (Google) became aware that one of its users was uploading or had images containing suspected child pornography, so it created a cyber tip line. The San Bernardino County Sheriff's Department received the cyber tip line report, which included the user name, e-mail address, phone number, and internet protocol (IP) address from where the uploads to the account occurred. A police officer investigated the matter and discovered the phone number belonged to defendant. He obtained a search warrant and sent it to Google for a search of all information related to the account for the e-mail address listed in the cyber tip report. Google sent the officer two flash drives with all the images and videos related to the account and web search history. The flash drives contained thousands of images, the majority of which were adult pornography, but also photographs of a prepubescent girl engaged in sexual activity.

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[1] All further statutory references will be to the Penal Code, unless otherwise noted.

Police officers executed a search warrant on the address associated with the account and located defendant at that residence. An officer escorted defendant to the rear patio and interviewed him. He asked defendant his name, date of birth, phone number, address, and e-mail addresses. The officer explained that he was just trying to confirm defendant's information before they got started. The officer informed defendant that he had received a tip showing some information going back to defendant's phone number and an e-mail account, and that he had already done a search warrant on the phone number and e-mail account and found pictures of child pornography. The officer then stated that defendant was now detained and was not free to leave, and that before he asked any more questions, he had to read defendant his *Miranda*[2] rights. The officer read him his rights, and defendant agreed to talk to him. The officer said that images of child pornography were being uploaded onto defendant's Google drive. Defendant admitted the e-mail address belonged to him and eventually admitted he was on a chat line, and a person sent him pictures and a video. He said he remembered obtaining the pictures and acknowledged there was a lot of pornography. He said he closed that account months ago. Defendant then said he downloaded the images from someone's Photobucket account. Defendant also said he created three e-mail accounts, but he deleted them. He asserted that when he got high, he did stupid things. He added that "what [he] was doing at the time was stupid," and he "was dumb." Defendant said he felt guilty that he was

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

being "turned on" by the images, which is why he erased them. He also said he used chat applications, liked Dropbox.

Defendant filed a motion at trial to exclude the portion of his statement given prior to him receiving *Miranda* warnings. The court held a hearing, and the officer who interviewed defendant testified. The court noted that when the officer went to the residence, there were two people there who had used the telephone number he received; thus, he did not know if defendant was the suspect. After hearing testimony, the court observed that the officer asked defendant his name, birthdate, address, and e-mail address, and after defendant gave one of the e-mail addresses the officer had obtained, he became a suspect; the officer read then him his *Miranda* rights. The court allowed the pre-*Mirandized* portion of defendant's statement.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether the trial court erred in denying his *Miranda* motion. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

SLOUGH
J.

FIELDS
J.